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United States Bankruptcy Court
Southern District of New York

)	
In re)	Chapter 11 Case
)	
DELPHI CORPORATION, <i>et al.</i>)	No. 05-44481
)	
Debtors.)	
)	

**OBJECTION OF BANK OF AMERICA LEASING & CAPITAL, LLC
TO DEBTORS' MOTION FOR POSTPETITION FINANCING
AND FOR ADEQUATE PROTECTION**

Bank of America Leasing & Capital, LLC ("Bank of America"), by and through its undersigned counsel, hereby submits this Objection to the Motion of the Chapter 11 Debtors herein (the "Debtors") for an Order Under 11 U.S.C. §§ 105, 361, 362, 363, 364(c), 364(d), and 364(e) and Fed.R.Bankr.P. 2002, 4001, and 9014 (I) Authorizing Debtors to Obtain Secured Postpetition Financing on Superpriority Secured and Priming Basis, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Lenders, (IV) Granting Interim Relief, and (V) Scheduling a Final Hearing under Fed.R.Bankr.P. 4001(b) and (c) (the "Motion"). Bank of America objects to the Motion on the following grounds: (i) the Debtors should not grant any lien or security interest whatsoever in the aircraft leases between Bank of America, as lessor, and Delphi Automotive Systems Human Resources LLC ("Delphi HR") nor in any of the personal property subject to these leases; and (ii) if any such lien or interest is

granted pursuant to the Motion, such interest should only attach to Delphi HR's interests in the leases and should be subordinate and junior in all respects to the interests of Bank of America.

1. Delphi Corporation and certain of its subsidiaries and affiliates, including Delphi HR (the "Debtors"), commenced these related Chapter 11 cases by filing separate voluntary petitions with this Court on October 8, 2005.

2. Prior to the commencement of these cases, Bank of America's predecessor-in-interest, Fleet National Bank, entered into two separate leases of aircraft, engines and avionics with SM 5105 LLC, a Delaware limited liability company and the predecessor-in-interest of Delphi HR.

3. The first lease is dated as of March 30, 2001 pursuant to which a certain Learjet 60 Aircraft bearing Manufacturer's Serial Number 237 and FAA Registration Number N699DA along with engines and avionics were leased to SM 5105 LLC (the "Learjet Lease"). The Learjet Lease was recorded with the Federal Aviation Administration ("FAA") on January 29, 2002. Uniform Commercial Code financing statements were filed with the State of Delaware on November 30, 2001 and the State of Michigan on May 1, 2001.

4. The second lease is also dated as of March 30, 2001 pursuant to which a certain Bombardier CL-600-2B16 (Variant 604) Aircraft bearing Manufacturer's Serial Number 5498 and FAA Registration Number N599DA along with engines and avionics were leased to SM 5105 LLC (the "Challenger Lease"). The Challenger Lease was recorded with the FAA on January 25, 2002. Uniform Commercial Code financing statements were filed with the State of Delaware on November 30, 2001 and the State of Michigan on May 1, 2001.

5. In the Motion, the Debtors are requesting authority to obtain postpetition financing from JPMorgan Chase Bank, N.A. and a syndicate of other financial institutions (the

“Postpetition Lenders”) in an amount not to exceed \$2 billion. As security for this proposed financing, the Debtors propose to grant to the Postpetition Lenders liens and security interests in all of the debtor’s prepetition and postpetition property including “leaseholds” but excluding certain specified property.

6. Bank of America objects to the Motion insofar as it may be deemed to grant to the Postpetition Lenders a lien and security interest in the property that is subject to the Learjet Lease and/or the Challenger Lease. This property does not constitute “property of the estate” within the meaning of section 541 of the Federal Bankruptcy Code since the property is the subject of true leases.

7. Bank of America also objects to the Motion insofar as it attempts to grant to the Postpetition Lenders any interest in the Learjet Lease and/or the Challenger Lease. In the event that this Court determines otherwise, the Interim and Final Financing Orders entered in these Chapter 11 cases should clearly state that any such interest so granted is expressly subject to the terms of these leases and does not attach to the lessor’s interests under the leases.

WHEREFORE, Bank of America Leasing & Capital, LLC respectfully requests that this Court

(a) deny the relief requested in the Motion insofar as it is inconsistent with the foregoing Objection; and

(b) grant such other and further relief as may be just and proper under the circumstances.

Dated: October 10, 2005

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